

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

IRON WORKERS DISTRICT COUNCIL OF
WESTERN NEW YORK and VICINITY WELFARE,
PENSION AND ANNUITY FUNDS by
Betty Fedorjaka, as Administrative Manager,

Plaintiff,

DECISION AND ORDER

06-CV-6219L

v.

IRON FABRICATING, INC.,
DARRIN CHIAPPONE,
Individually and as an officer of Iron Fabricating,

Defendants.

Plaintiffs have moved the Court for reconsideration of its Order dated December 11, 2006, granting default judgment against defendants Iron Fabricating, Inc. and Darrin Chiappone in the amount of \$394,524.88, but denying plaintiffs' request for an audit of defendants' books and records.

Plaintiff's motion for reconsideration (Dkt. #11) is GRANTED. I find that plaintiff is entitled to the requested relief. Docket #9 is rescinded. The instant Order shall constitute the Court's Order granting plaintiff's motion for default judgment, as follows:

Plaintiffs having duly moved this Court for entry of default judgment, pursuant to Rule 54 and Rule 55(b)(2) of the Federal Rules of Civil Procedure, in favor of Plaintiffs and against Defendants Iron Fabricating, Inc. and Darrin Chiappone individually,

NOW, upon reading and filing the Notice of Motion, dated the 27th day of September, 2006, the Affidavit of Jennifer A. Clark, Esq., sworn to the 27th day of September, 2006, together with the Summons and Complaint, with proof of service thereof, the Entry of Default on the 11th day of August, 2006, all in support of said motion, and upon all the proceedings heretofore had herein, and after hearing Blitman & King LLP, Jennifer A. Clark, of Counsel, attorneys for Plaintiffs, in support of said motion, and no one having appeared in opposition thereto, and it appearing that Defendants Iron Fabricating, Inc. and Darrin Chiappone individually, have failed to plead or otherwise defend this action; and

NOW, on motion of Blitman & King LLP, Jennifer A. Clark, of counsel, and after due deliberation having been had thereon, it is

ORDERED, that the motion be and the same hereby is granted in all respects, and that judgment by default be entered in this action in favor of Plaintiffs and against the Defendants, Iron Fabricating, Inc. and Darrin Chiappone, individually, for the relief demanded in the Complaint herein together with the costs and disbursements of this proceeding, and it is further

ORDERED, that this Court has expressly determined pursuant to Rule 54(b) of the Federal Rules of Civil Procedure that there is no just reason for delay in entering final judgment against Defendants Iron Fabricating, Inc. and Darrin Chiappone because Plaintiffs might be prejudiced by a delay in recovering a monetary award against Defendants since other creditors may obtain priority to Defendants' assets thereby precluding collection of Plaintiffs' claims; and it is further

ORDERED, that judgment be entered herein by the Clerk of the Court in favor of the Plaintiffs and against the Defendants Iron Fabricating, Inc. and Darrin Chiappone, individually, for the sum of \$394,524.88, plus interest thereon at the rate provided for by 28 U.S.C. Section 1961(a), and that Plaintiffs have execution therefore; and it is further

ORDERED, that Defendants Iron Fabricating, Inc. and Darrin Chiappone be required to produce, on or before March 1, 2007, their books and records for the period July 1, 2005 to date for Plaintiffs' review and audit, to pay the cost and expense of such audit, to pay all attorneys' and paralegal fees and costs incurred in obtaining that audit; and it is further

ORDERED, that this Court retains jurisdiction to enter judgment in favor of the Plaintiffs and against the Defendants Iron Fabricating, Inc. and Darrin Chiappone for any and all contributions and deductions that are determined to be due as a result of the audit, plus the applicable interest thereon, liquidated damages, costs and expenses of collection, audit fees and attorneys' and paralegal fees.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
January 10, 2007.